

Appl. No. 09/756,899
Amdt. dated August 27, 2003
Reply to Office Action of March 24, 2003

REMARKS

The Office Action, mailed March 24, 2003, has been received and reviewed. Claims 1-5, 10-13, 16-25 and 31-33 are pending and claims 1-5, 10-13, 16-25 and 31-32 stand rejected. All claim amendments are made without prejudice or disclaimer. The present amendment and a Notice of Appeal have been transmitted by Facsimile; no additional copy is being sent by mail. Reconsideration is respectfully requested.

The applicants thank the Examiner and her supervisor for the interview conducted August 11, 2003. As acknowledged at the interview, the claim amendments presented herein overcome the rejections under 35 U.S.C. § 112, first paragraph, Paper 14. The amendment places the claims in better condition for appeal by removing at least the enablement and written description rejections. Furthermore, as discussed at the interview, the claim amendments distinguish the claims over Huang *et al.* and should place the claims in condition for allowance.

The amendments do not raise a new issue or require further consideration or search and place the claims in better condition for appeal, as acknowledged by the Examiner in Papers 13 and 14. MPEP § 714.13.

Support for Claim Amendments:

Claims 1, 4, 10-13, 16-17 and 22 have been amended without prejudice or disclaimer. Claims 2-9 and 11-32 have been canceled without prejudice or disclaimer. Support for the amendments can be found throughout the specification, for example, on page 6 of the specification. This peptide blocks sensitization of mast cells, for example, on pages 7-9 of the specification.

Claim Rejections Under 35 U.S.C. § 112, First Paragraph:

Claims 1-5, 10-13, 16-25 and 31-32 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking enablement commensurate with the scope of the claims. In addition, claims 1-5, 10-13, 16-25 and 31-32 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking an adequate written description.

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While the applicants respectfully disagree with the claim rejections based on enablement and written description, as outlined in Paper 13, the applicants have amended the claims without prejudice or disclaimer to facilitate prosecution of the application. As noted by the Examiner, "a pharmaceutical composition consisting of SEQ ID NO:1 and a pharmaceutical[ly] acceptable carrier ... overcome[s] the ... enablement and written description [rejection]." (Paper 14) No new search or consideration is required by the amendment, as the Examiner has indicated that the claims, as amended, are enabled for "a composition comprising a peptide consisting of SEQ ID NO:1," (Paper 13 at page 2), and satisfy the written description requirement since the specification discloses a "peptide consisting of SEQ ID NO:1 that inhibits ... bronchial constriction *in vivo*," (Paper 13 at page 12). Reconsideration and withdrawal of the rejection is thus respectfully requested.

Claim Rejection Under 35 U.S.C. § 102(b):

Claims 1-5, 10-13, 16-25 and 31-32 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Huang *et al.* Applicants respectfully traverse the rejection for the following reasons. First, Huang *et al.* does not disclose a pharmaceutical composition consisting of a peptide of sequence AHWSGHCL and a pharmaceutically acceptable carrier or diluent. As discussed at the interview, using closed "consisting of" language excludes non-pharmaceutically acceptable carriers and diluents. At most, Huang *et al.* discloses the peptide of SEQ ID NO:1 together with immunoglobulin light chain (LC). LC is not the peptide of SEQ ID NO:1, nor is it a pharmaceutically acceptable carrier or diluent. The reference thus fails to disclose a pharmaceutical composition consisting of SEQ ID NO:1 and a pharmaceutical carrier or diluent and the anticipation rejection fails.

Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing, the claims, as amended, should be in condition for allowance. Furthermore, the amendment cancels claims and removes the rejections under 35 U.S.C. § 112,

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first paragraph. Thus, the amendment places the claims in better condition for appeal. MPEP § 714.13. Furthermore, the claim amendments do not raise a new issue or require further consideration or search, as acknowledged in Paper 13. If questions exist after consideration of the foregoing, the Office is kindly requested to contact applicants' attorney at the number given below.

Respectfully submitted,



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